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**FEB 28 2006**

**OFFICE OF PETITIONS**

|                                 |   |                      |
|---------------------------------|---|----------------------|
| In re Application of            | : |                      |
| Bernd Disse                     | : |                      |
| Application No. 10/644,333      | : | DECISION ON PETITION |
| Filed: August 20, 2003          | : |                      |
| Attorney Docket No. 1/1196-1-C1 | : |                      |

This is a decision on the petition under 37 CFR 1.181, filed January 13, 2006, to withdraw the holding of abandonment.

On October 15, 2004, the Office mailed a Notice of Non-Compliant Amendment, which set a one-month extendable period to respond. In the absence of timely reply, the application became abandoned on November 16, 2004. On December 14, 2005, the Office mailed a Notice of Abandonment.

In the present petition, the practitioner, Andrea D. Small, asserts that she did not receive the Notice of October 15, 2004. The practitioner states that a search of the file jacket and docket records reveals that the Notice was not received. In support of the assertion of non-receipt, the practitioner submits the following exhibits: (1) Exhibit A is a copy of the electronic List of Actions logged for the case where no log was entered for a Office communication dated October 15, 2004; (2) Exhibit B is a copy of all replies docketed for a date three months from the mail date of the non-received Notice, where no due date was generated for Office communication dated October 15, 2004; (3) Exhibit C is a mail log for the period starting October 15, 2004 through November 17, 2004, where no entry of an Office communication was made for the aforementioned case; and, (4) Exhibit D is a statement from practitioner's docket manager, Nancy O'Grady, indicating common practice at practitioner's office for mail log entries.

A review of the record indicates no irregularity in the mailing of the Notice, and in the absence of any irregularity in the mailing, there is a strong presumption that the Notice was properly mailed to the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. To establish non-receipt of an Office communication, applicant must include a statement

from the practitioner, stating that the practitioner did not receive the Office communication and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.<sup>1</sup> For example, if a three-month period for reply was set in the non-received Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the non-received Office action must be submitted as documentary proof of non-receipt of the Office action. The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g. if the practitioner has a history of not receiving Office actions).

After reviewing the documents submitted on petition, the Office concludes that the showing of record is sufficient to warrant withdrawal of the holding of abandonment. The practitioner for the applicant submitted copies of mail logs and docket records where the Notice would have been entered had it been received and docketed. The practitioner attested to the fact that a search of the file jacket and docket records indicated that the Notice was not received. Furthermore, the docket manager provided an explanation of the docketing system. As applicant has presented the required showing, the petition to withdraw the holding of abandonment is granted.

**As applicant has established non-receipt of the Notice of Non-Compliant Amendment of October 15, 2004, the Technology Center Art Unit 1618 is directed to re-mail the Notice of Non-Compliant Amendment and restart the period for reply.**

This matter is being referred to Technology Center Art Unit 1618 for action consistent with this decision.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.

*Christina Tartera Donnell*

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<sup>1</sup> M.P.E.P. § 711.03(c); See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).